IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL SIDE JURISDICTION

CHAMBER SUMMONS NO.566 OF 2004
IN
SUMMARY SUIT NO.192 OF 2002

Vijayta Audio World Limited ...Plaintiff
Vs.
Milestone Entertainment Pvt. Ltd. ...Defendant

Ms.Shveta Patrawala i/b. D. Shah & Co. for Plaintiff
Mr. N.N.Tated i/b. Mahimtura & Co. for Defendant

CORAM: ROSHAN DALVI, J.
DATED: 19TH DECEMBER, 2005

P.C.

. This suit has been filed on 18th December 2001, summons was served on 24th January 2002. The Defendant's Director was out of India between 18th January 2002 and 30th January 2002. Hence, appearance was not filed on behalf of the Defendants to contest the summary suit.

2. The Plaintiff took out a Notice of Motion for deposit of certain amounts, copy of which was served upon the Defendants on 26th April 2002 along with the copy of the plaint.

3. It is the Defendant's case that the date of summons earlier served came to be misplaced because the concerned Director was out of India, upon the copy of the Notice of Motion being served the Defendants

sought to contest the suit. Vakalatnama of the Defendants came to be filed on 9th April 2002.

4. The Plaintiffs obtained Ex-parte decree. The Defendants sought to set it aside in another Notice of Motion. The Ex-parte decree came to be set aside on 25th February 2004. The order of Shri Justice Karnik dated 25th February 2004 shows the negligence of the Defendants for which they could not be punished. The Defendants were directed to pay costs of Rs.10,000/- to the Plaintiffs. The costs were paid by a pay-order dated 28th February 2004. Thereafter the Defendants have taken out this Chamber Summons for condoning the delay of 64 days in filing the Vakalatnama.

5. The Defendants have already been allowed to defend the suit impliedly since the Ex-parte decree is set aside. The Defendants have already paid the costs. The parties are required to be heard on merits. The delay in filing the Vakalatnama is therefore, condoned. The Vakalatnama has been filed since 9th April 2002 and has remained under objection. The Vakalatnama shall be taken on record. The suit shall proceed in accordance with Order 37.

6. The Chamber summons disposed of accordingly. N.O.C.

(ROSHAN DALVI, J.)